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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PAUL SAPAN, individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DIAMOND RESORTS HOLDINGS,
LLC,

Defendant.

CASE NO.: 8:23-cv-147-DOC-ADS

**STIPULATED PROTECTIVE
ORDER REGARDING
CONFIDENTIALITY**

1 **I. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the Court to file material under seal.

14 **II. GOOD CAUSE STATEMENT**

15 This action is likely to involve trade secrets, customer and pricing lists and other
16 valuable research, development, commercial, financial, technical and/or proprietary
17 information for which special protection from public disclosure and from use for any
18 purpose other than prosecution of this action is warranted. Such confidential and
19 proprietary materials and information consist of, among other things, confidential
20 business or financial information, information regarding confidential business practices,
21 or other confidential research, development, or commercial information (including
22 information implicating privacy rights of third parties), information otherwise generally
23 unavailable to the public, or which may be privileged or otherwise protected from
24 disclosure under state or federal statutes, court rules, case decisions, or common law.
25 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
26 disputes over confidentiality of discovery materials, to adequately protect information
27 the parties are entitled to keep confidential, to ensure that the parties are permitted
28 reasonable necessary uses of such material in preparation for and in the conduct of trial,

1 to address their handling at the end of the litigation, and serve the ends of justice, a
 2 protective order for such information is justified in this matter. It is the intent of the
 3 parties that information will not be designated as confidential for tactical reasons and
 4 that nothing be so designated without a good faith belief that it has been maintained in
 5 a confidential, non-public manner, and there is good cause why it should not be part of
 6 the public record of this case.

7 **III. DEFINITIONS**

8 A. Action: This pending federal lawsuit bearing the caption *Sapan v.*
 9 *Diamond Resorts Holdings, LLC*, No. 8:23-cv-147-DOC-ADS (C.D. Cal.).

10 B. Challenging Party: A Party or Non-Party that challenges the designation
 11 of information or items under this Order.

12 C. “CONFIDENTIAL” Information or Items: Information (regardless of how
 13 it is generated, stored or maintained) or tangible things that qualify for protection under
 14 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
 15 Statement.

16 D. Counsel: Outside Counsel of Record and House Counsel (as well as their
 17 support staff).

18 E. Designating Party: A Party or Non-Party that designates information or
 19 items that it produces in disclosures or in responses to discovery as
 20 “CONFIDENTIAL.”

21 F. Disclosure or Discovery Material: All items or information, regardless of
 22 the medium or manner in which it is generated, stored, or maintained (including, among
 23 other things, testimony, transcripts, and tangible things), that are produced or generated
 24 in disclosures or responses to discovery in this matter.

25 G. Expert: A person with specialized knowledge or experience in a matter
 26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
 27 expert witness or as a consultant in this Action.

28 H. House Counsel: Attorneys who are employees of a party to this Action.

House Counsel does not include Outside Counsel of Record or any other outside counsel.

I. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

J. Outside Counsel of Record: Attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

K. Party: Any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

L. Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this Action.

M. Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

N. Protected Material: Any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

O. Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

IV. SCOPE

A. The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

B. Any use of Protected Material at trial shall be governed by the orders

of the trial judge. This Order does not govern the use of Protected Material at trial.

V. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

VI. DESIGNATING PROTECTED MATERIAL

A. Exercise of Restraint and Care in Designating Material for Protection

1. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

2. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

3. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 B. Manner and Timing of Designations

2 1. Except as otherwise provided in this Order (*see, e.g.*, Section
3 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material
4 that qualifies for protection under this Order must be clearly so designated before the
5 material is disclosed or produced.

6 2. Designation in conformity with this Order requires the following:

7 a. For information in documentary form (*e.g.*, paper or
8 electronic documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (*e.g.*, by making appropriate markings in the margins).

14 b. A Party or Non-Party that makes original documents
15 available for inspection need not designate them for protection until after the inspecting
16 Party has indicated which documents it would like copied and produced. During the
17 inspection and before the designation, all of the material made available for inspection
18 shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine which
20 documents, or portions thereof, qualify for protection under this Order. Then, before
21 producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing Party
24 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
25 in the margins).

26 c. For testimony given in depositions, that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony or alternatively a statement on the record during the

1 deposition that the deposition testimony contained confidential “CONFIDENTIAL”
 2 Information or Items, and in either event the entirety of the deposition testimony and
 3 the transcript of the deposition shall be treated as protected under this Order, with the
 4 Designating Party required to provide specific designations of protected testimony
 5 within seven (7) days of receipt of the deposition transcript, following which only the
 6 specifically designated testimony and portions of the transcript shall be treated as
 7 protected under this Order.

8 d. For information produced in form other than document and
 9 for any other tangible items, that the Producing Party affix in a prominent place on the
 10 exterior of the container or containers in which the information is stored the legend
 11 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 12 protection, the Producing Party, to the extent practicable, shall identify the protected
 13 portion(s).

14 C. Inadvertent Failure to Designate

15 1. If timely corrected, an inadvertent failure to designate qualified
 16 information or items does not, standing alone, waive the Designating Party’s right to
 17 secure protection under this Order for such material. Upon timely correction of a
 18 designation, the Receiving Party must make reasonable efforts to assure that the
 19 material is treated in accordance with the provisions of this Order.

20 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 A. Timing of Challenges: Any party or Non-Party may challenge a
 22 designation of confidentiality at any time that is consistent with the Court’s Scheduling
 23 Order.

24 B. Meet and Confer: The Challenging Party shall initiate the dispute
 25 resolution process under Local Rule 37.1 et seq.

26 C. The burden of persuasion in any such challenge proceeding shall be on the
 27 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
 28 to harass or impose unnecessary expenses and burdens on other parties) may expose the

1 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
 2 the confidentiality designation, all parties shall continue to afford the material in
 3 question the level of protection to which it is entitled under the Producing Party's
 4 designation until the Court rules on the challenge.

5 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 **A. Basic Principles**

7 1. A Receiving Party may use Protected Material that is disclosed or
 8 produced by another Party or by a Non-Party in connection with this Action only for
 9 prosecuting, defending, or attempting to settle this Action. Such Protected Material
 10 may be disclosed only to the categories of persons and under the conditions described
 11 in this Order. When the Action has been terminated, a Receiving Party must comply
 12 with the provisions of Section XIV below.

13 2. Protected Material must be stored and maintained by a Receiving
 14 Party at a location and in a secure manner that ensures that access is limited to the
 15 persons authorized under this Order.

16 **B. Disclosure of "CONFIDENTIAL" Information or Items**

17 1. Unless otherwise ordered by the Court or permitted in writing by the
 18 Designating Party, a Receiving Party may disclose any information or item designated
 19 "CONFIDENTIAL" only to:

20 a. The Receiving Party's Outside Counsel of Record in this
 21 Action, as well as employees of said Outside Counsel of Record to whom it is
 22 reasonably necessary to disclose the information for this Action;

23 b. The officers, directors, and employees (including House
 24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
 25 Action;

26 c. Experts (as defined in this Order) of the Receiving Party to
 27 whom disclosure is reasonably necessary for this Action and who have signed the
 28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 d. The Court and its personnel;
 2 e. Court reporters and their staff;
 3 f. Professional jury or trial consultants, mock jurors, and
 4 Professional Vendors to whom disclosure is reasonably necessary for this Action and
 5 who have signed the “Acknowledgment and Agreement to be Bound” attached as
 6 Exhibit A hereto;

7 g. The author or recipient of a document containing the
 8 information or a custodian or other person who otherwise possessed or knew the
 9 information;

10 h. During their depositions, witnesses, and attorneys for
 11 witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the
 12 deposing party requests that the witness sign the “Acknowledgment and Agreement to
 13 Be Bound;” and (ii) they will not be permitted to keep any confidential information
 14 unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise
 15 agreed by the Designating Party or ordered by the Court. Pages of transcribed
 16 deposition testimony or exhibits to depositions that reveal Protected Material may be
 17 separately bound by the court reporter and may not be disclosed to anyone except as
 18 permitted under this Stipulated Protective Order; and

19 i. Any mediator or settlement officer, and their supporting
 20 personnel, mutually agreed upon by any of the parties engaged in settlement
 21 discussions.

22 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 23 **IN OTHER LITIGATION**

24 A. If a Party is served with a subpoena or a court order issued in other
 25 litigation that compels disclosure of any information or items designated in this Action
 26 as “CONFIDENTIAL,” that Party must:

27 1. Promptly notify in writing the Designating Party. Such notification
 28 shall include a copy of the subpoena or court order;

2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. Make the information requested available for inspection by the Non-Party, if requested.

C. If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
 2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 3 parties reach an agreement on the effect of disclosure of a communication or
 4 information covered by the attorney-client privilege or work product protection, the
 5 parties may incorporate their agreement in the Stipulated Protective Order submitted to
 6 the Court.

7 **XIII. MISCELLANEOUS**

8 A. Right to Further Relief: Nothing in this Order abridges the right of any
 9 person to seek its modification by the Court in the future.

10 B. Right to Assert Other Objections: By stipulating to the entry of this
 11 Protective Order, no Party waives any right it otherwise would have to object to
 12 disclosing or producing any information or item on any ground not addressed in this
 13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 14 ground to use in evidence of any of the material covered by this Protective Order.

15 C. Filing Protected Material: A Party that seeks to file under seal any
 16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
 17 only be filed under seal pursuant to a court order authorizing the sealing of the specific
 18 Protected Material at issue. If a Party's request to file Protected Material under seal is
 19 denied by the Court, then the Receiving Party may file the information in the public
 20 record unless otherwise instructed by the Court.

21 **XIV. FINAL DISPOSITION**

22 A. After the final disposition of this Action, as defined in Section V, within
 23 sixty (60) days of a written request by the Designating Party, each Receiving Party must
 24 return all Protected Material to the Producing Party or destroy such material. As used
 25 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 26 summaries, and any other format reproducing or capturing any of the Protected
 27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
 28 must submit a written certification to the Producing Party (and, if not the same person

or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section V.

B. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: June 26, 2023 /s/ Christopher J. Reichman
Attorney(s) for Plaintiff Paul Sapan

Dated: June 26, 2023 /s/ Roy Taub
Attorney(s) for Defendant
Diamond Resorts Holding, LLC

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: June 28, 2023 /s/ Autumn D. Spaeth
HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [name], of _____
_____ [address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issue by the United States District Court for the Central District of
California on _____ [DATE] in the case of *Sapan v. Diamond*
Resorts Holdings, LLC, No. 8:23-cv-147-DOC-ADS (C.D. Cal.). I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [name] of _____
_____ [address
and telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____